

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASES NOS. 2013-MED-10-1258 AND 1259**

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

and

THE LOGAN COUNTY SHERIFF

FACT FINDING REPORT

**Submitted by John F. Lenehan
MARCH 5, 2014**

TO:

VIA E-MAIL

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FINDING AND RECOMMENDATION

I BACKGROUND

On November 26, 2013, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of Ohio Patrolmen's Benevolent Association and the Logan County Sheriff (Cases Nos. 2013-MED -10 -1258 and 1259). A Fact Finding Hearing was held on February 24, 2014, 10:00 a.m., at the Logan County Juvenile Detention Center, 104 South Madriver Rd., Bellefontaine, Ohio 43311. The Ohio Patrolmen's Benevolent Association ("Union" or "OPBA") was representative by Joseph M. Hegedus, Esquire, and the Logan County Sheriff ("Sheriff" or "Employer") was represented by Benjamin S. Albrecht, Esquire, Fishel, Hass, Kim LLP. Also, in attendance on behalf of the Union were: Joe Torsell, Damon Dixon, Christina Joseph, John Godwin, and three other members of the bargaining unit. Appearing on behalf of the Sheriff were: Randy Dodds, Chief Deputy; Trina K. Kopus, Administrative Assistant; and, Greg Fitzpatrick, Jail Administrator.

During the hearing the parties attempted to mediate the outstanding issues. Although considerable progress was made toward a resolution, the parties did not reach a mediated settlement. As a result, based upon the evidence and stipulations submitted by the parties, the following report is the Finding and Recommendation of the Fact Finder regarding all outstanding issues.

At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties' representatives and SERB on March 5, 2014.

A. Description of the Parties and Bargaining Unit

The parties are the Ohio Patrolmen's Benevolent Association and the Logan County Sheriff. There are two bargaining units represented by the Union; one is for the Correction Officers and the other is for Deputy Sheriffs. According to the prehearing statements of the parties there are approximately 22 to 29 employees in the Correction Officers' bargaining unit and 16 to 20 employees in the Deputy Sheriffs' bargaining unit. The bargaining units are specifically defined, according to the current Collective Bargaining Agreements (CBAs), as follows:

Corrections Unit

Included: All full-time employees employed in the classification of Corrections Officer, including Juvenile Corrections Officer, and all full-time employees employed in the classification of Corrections Supervisor I (Corporal), including Juvenile Corrections Supervisor I (Corporal).

Excluded: All full-time employees of the Logan County Sheriff's Office not included above and all employees exempted pursuant to Chapter 4117, including but not limited to management-level, supervisor, confidential employees, the Sheriff, Deputies, Lieutenants, Sergeants, seasonal, intermittent, part-time, casual and all other employees not specifically included herein.

Deputies Unit

Included: All full-time employees employed in the classification of Deputy Sheriff.

Excluded: All full-time employees of the Logan County Sheriff's Office not included above and all employees exempted pursuant to Chapter 4117, including but not limited to management-level, supervisory, confidential employees, the Sheriff, Chief Deputy, Lieutenants, Sergeants, seasonal, intermittent, part-time, casual and all other employees not specifically included herein.

The Logan County Sheriff is responsible for performing law enforcement and safety services in Logan County, Ohio. Logan County is located in central western Ohio with a population of approximately 45, 500 and a per capital income of approximately \$34, 500.

B. History of Bargaining

The current Collective Bargaining Agreements ("CBAs") were effective from January 1, 2011 through December 31, 2013, with provisions for reopeners on wages only for 2012 and 2013. The CBAs provided no wage increases for 2011, i.e., January 1 through December 31, 2011. The agreement reached on the wage reopeners for 2012 provide for a base wage freeze, with movement on the wage steps in accordance with the CBAs. The *quid pro quo* for this agreement on the 2012 reopeners was the Sheriff's agreement not to lay off any full-time OPBA bargaining unit members during 2012. However, if it became necessary to lay off bargaining unit members, the agreement on the reopener would be declared null and void and the parties would immediately reopen negotiations on the reopeners for 2012 and 2013.

For the 2013 wage reopeners, the parties agreed to a one per cent (1%) wage increase effective the first full pay period in January of 2013 and another increase of three quarters of a percent (.75%) effective during the first full pay period of July 2013. According to the language

of the agreement on the 2013 wage reopener the increases were to be reflected in the CBAs as increases on the base wage rates (steps).

Although the parties agreed on a number of items, they submitted the following issues for a finding and recommendation by the Fact Finder.

Corrections Bargaining Unit

1. Article 11, Hours of Work and Overtime
2. Article 15, Holidays
3. Article 18, Vacation
4. Article 22, Wages
5. Article 27, Duration

Deputy Unit

1. Article 11, Hours of Work and Overtime
2. Article 15, Holidays
3. Article 22, Wages
4. Article 27, Duration

All tentative agreements and the unchanged language of the current CBAs are incorporated in this report.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;

- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

ARTICLE 11

HOURS OF WORK AND OVER TIME

Section 11.8 Corrections' CBA

Union's Position - Correction Officers' CBA

Section 11.8

The Union proposes to change the provisions of Section 11.8. Compensatory Time, fourth paragraph to read as follows:

“Compensatory time hours will be paid to the employee’s designated beneficiary or to the estate, upon death of the employee while employed by the Sheriff. **Employees may cash in any amount of compensatory time in minimum increments of forty (40) hours by giving written notice to the Sheriff. Employees will receive payment within thirty (30) days of the written notice.**”

Employer's Position- Correction Officers CBA

The Sheriff objects to the foregoing language proposed by the Union. It proposes current language (or no language) regarding cashing out compensatory time. According to the Sheriff, the Union’s proposal would result in difficulty in managing the budget. A request to convert compensatory time to cash could be made in such a manner that the Sheriff could not fund the requests, or would have to fund the requests to the detriment of other fiscal responsibilities.

Finding and Opinion

The Employer's position is more persuasive. Certainly, the Union's proposal could, and would, create unpredictability in scheduling and budgeting for the payment for overtime. The Union has not presented sufficient evidence to justify changing the current language of this section.

Recommendation

Therefore, it is recommended that there be no change in the language of Section 11.8 of the Correction Officer's CBA.

Section 11.4 Deputy Sheriffs' CBA

Union's Position- Deputy Sheriff CBA

The Union proposes to add the following language to Section 11.4: **“Court overtime will be offered to full-time bargaining unit members prior to being offered to any non-bargaining unit personnel.”**

Employer's Position- Deputy Sheriff CBA

The Sheriff opposes the addition of the foregoing language to the Deputy Sheriffs' CBA. According to the Sheriff there are currently two deputies assigned to work Court Security. When one deputy is off, to help minimize costs, a part-time deputy is assigned. Requiring the Sheriff to fill the position with overtime bargaining unit personnel, rather than part-time deputies, would have a negative impact on an already tight budget.

Finding and Opinion

Based upon the past practice of the parties and the fact that the Union has not submitted sufficient evidence to justify any change in this provision of the CBA, its request should be denied.

Recommendation

Therefore it is recommended that there be no change in the language of Section 11.4 of the Deputy Sheriff's CBA.

Section 11.8 Deputy Sheriffs' CBA

Union's Position- Deputy Sheriffs' CBA

The Union proposes to add the following language to the first paragraph of this section of the CBA. **“Compensatory time may be converted to cash at any time with two weeks written notice to the Sheriff.”**

Employer's Position- Deputy Sheriffs' CBA

The Employer opposes the Union's position for the same reasons it did the Corrections' proposal. The Union's proposal would result in the Sheriff having difficulty managing its budget.

Finding and Opinion

The Union has not submitted convincing evidence to justify any change in the current contract language.

Recommendation

Therefore, it is recommended that the Union's proposal on this section of the CBA be rejected and that there be no change in the current language of Section 11.8 of the Deputy Sheriffs' CBA.

ARTICLE 15

HOLIDAYS

Section 15.4 (Personal Days) Correction Officers' CBA

Union's Position- Correction Officers' CBA

The Union proposes that Section 15.4 be changed to read as follows:

“All bargaining unit employees shall receive four (4) personal days per calendar year. Each employee ~~must~~ **may** utilize at least one personal day per calendar quarter, ~~or will lose the ability to use that one day.~~”

“Employees may carry up to thirty-two (32) hours of personal leave in his or her accumulated time bank, for an unlimited time. Any personal leave accumulated beyond thirty-two (32) hours will be paid out to the employee at the rate of pay at the time that it was earned.”

Employer’s Position- Correction Officers’ CBA

The Employer opposes the Union’s request to carry an employee’s personal days beyond each quarter. Such accumulation, according to the Employer, would create a financial detriment and problems with staffing.

Finding and Opinion

The Employer’s position in this case should be sustained. Personal leave under the CBA and with other governmental entities was not intended to be a vested benefit as is the case with vacation leave. Even vacation leave is frequently limited if not used within a definite period of time. In addition to the cost that would be borne by the Employer, there is no comparable to support the Union’s position.

However, fairness dictates that where a written request has been made for the use of a personal day to which the employee is entitled and such is denied, payment for that day should be made at the end of the quarter.

Recommendation

Therefore, it is recommended that Union’s proposal be rejected and that Section 15.4 of the Correction Officers’ CBA should read as follows:

“All bargaining unit employees shall receive four (4) personal days per calendar year. Each employee must utilize at least one personal day per calendar quarter, or will lose the ability to use that one day. **Where a bargaining unit employee has made a written request for use of personal leave to which he is entitled and is denied the use of such, he shall be compensated for that day at the end of the quarter.**”

Section 15.2 Deputy Sheriffs' CBA

Union's Position- Deputy Sheriffs' CBA

The Union has proposed to add the following language to Section 15.2. “**Additionally, employees shall receive double time for all hours worked on any Holiday that the Sheriff determines not to grant accrued paid leave off to any employees.**” Apparently, a problem exists with Sheriff’s denial of accrued paid leave off on holidays.

Employer's Position- Deputy Sheriff's CBA

The Employer is opposed to the Union’s proposal for the reason that double pay for hours worked on a holiday during which no leave is granted would have an economic impact beyond the premium pay already received by bargaining unit personnel for work performed on a holiday.

Finding and Opinion

Currently, the deputies in the bargaining unit receive time and half plus the holiday pay for working on a holiday. The Union has offered no evidence justifying double time pay.

It was indicated during the hearing that the parties through a letter of understanding may be able to agree to an adjustment of assigning staff on holidays or long holiday weekends that could relieve the impact limiting the use of accrued paid leave.

Recommendation

Therefore, it is recommended that there be no change in the language of Section 15.02 of the Deputy Sheriffs’ CBA. It is further recommended that the parties meet for the purpose of negotiating a Memorandum of Understanding to resolve any staffing issues on holidays.

Section 15.4 Deputy Sheriffs' CBA

Union's Position- Deputy Sheriffs' CBA

The Union proposes the following changes in the language of Section 15.4 of the CBA.

“All bargaining unit employees shall receive four (4) personal days per calendar year. Each employee must utilize at least one personal day per calendar quarter or will ~~lose the ability to use that one day or~~ **receive eight hours of pay for that one day.**

Employer’s Position- Deputy Sheriffs’ CBA

The Employer argues that the Union’s proposal has an economic impact and should be rejected for the same reasons that it objected to the changes proposed by the Corrections Officers.

Finding and Opinion

The Employer’s position is more persuasive. The Union has not justified adding four (4) more paid days to the year. However, fairness dictates that where a written request has been made for the use of a personal day to which the employee is entitled and such is denied, payment for that day will be made at the end of the quarter.

Recommendation

Therefore, it is recommended that the Union’s proposal be denied and that the language of Section 15.4 of the Deputy Sheriffs’ CBA should read as follows:

“All bargaining unit employees shall receive four (4) personal days per calendar year. Each employee must utilize at least one personal day per calendar quarter, or will lose the ability to use that one day. **Where a bargaining unit employee has made a written request for use of personal leave to which he is entitled and is denied the use of such, he shall be compensated for that day at the end of the quarter.**”

ARTICLE 18 **VACATION**

Section 18.3 Vacation Accumulation Correction Officers’ CBA

Union’s Position- Correction Officers’ CBA

The Union proposes that Section 18.3 be amended to read as follows:

“Employees may not accrue and carry over more than ~~three (3)~~ **four (4)** times their annual accrual rate. Employees with 1-8 years of service are permitted to have a maximum unused vacation balance of ~~six (6)~~ **eight (8)** weeks ; employees with 9-15

years of service are permitted to have a maximum unused vacation balance of ~~nine (9)~~ **twelve (12)** weeks ; employees with 16-25 years of service are permitted to have a maximum unused vacation balance of ~~twelve (12)~~ **sixteen (16)** weeks; and employees with 26 or more years of service are permitted to have an unused vacation balance of ~~fifteen (15)~~ **twenty (20)** weeks.”

Employer’s Position-Correction Officers CBA

The Employer’s response to the foregoing proposal is that is costly and exceeds what is permitted by Ohio law.

Finding and Opinion Correction Officers

The carryover of accrued vacation under the current CBA is reasonable. The Employer’s position should be given greater weight.

Recommendation

Therefore it is recommended that the Union’s proposal be rejected and there be no change to the current language of the CBA

ARTICLE 22

WAGES

Section 22.1 and 22.3 Correction Officers CBA

Union’s Position- Correction Officers’ CBA

The Union proposes the following changes in Section 22.1 of the Correction Officers CBA.

“Effective the first full pay period following January 1, ~~2011~~—**2014**, bargaining unit employees shall receive a **three percent (3%) wage increase to all wage steps in the wage scale contained in Section 22.2.** ~~zero percent (0%) wage increase. This section shall be reopened in December 2011 for negotiations regarding cost of living increases.~~ **The wage scale will be further increase by 3% effective January 1, 2015 and 3% effective January 1, 2016.**

The Union also proposes a new Section 22.3 be added to the CBA providing for longevity pay, which reads as follows:

Section 22.3 [New] All employees will receive longevity pay for all full-time years of service with the Logan County Sheriff's Office, for all hours worked, pursuant to the following schedule:

<u>YEARS OF SERVICE</u>	<u>HOURLY LONGEVITY PAY</u>
5- 9 years	\$.45 per hour
10-14 years	\$.55 per hour
15-19 years	\$.65 per hour
20-25 years	\$.75 per hour
25 + years	\$1.00 per hour

Section 22.1, 22.3 and 22.4 Deputy Sheriffs' CBA

Union's Position- Deputy Sheriffs' CBA

The Union proposes the following changes in Section 22.1 of the Deputy Sheriffs' CBA.

“ Effective the first full pay period following January 1, ~~2011~~ **2014, 2015 and 2016**, bargaining unit employees shall receive a ~~zero~~ **three** percent (~~0%~~) **(3%)** wage increase. ~~This section will be reopened in December 2011 for negotiations.~~

In addition, the Union proposes that Section 22.33, Stipends, be changed to provide a Field Training Officer (“FTO”) stipend of one dollar (\$1.00) per hour, which would read as follows:

“Any employee assigned as a Crime Scene/Evidence Technician **and/or Field Training Officer (“FTO”)** shall receive a one dollar (\$1.00) per hour stipend in addition to his base step rate of pay for all hours worked or in paid status for the duration of this assignment.

Finally, the Union proposes a new Section 22.3 be added to the CBA providing for longevity pay, which reads as follows:

Section 22.3 [New] All employees will receive longevity pay for all full-time years of service with the Logan County Sheriff's Office, for all hours worked, pursuant to the following schedule:

<u>YEARS OF SERVICE</u>	<u>HOURLY LONGEVITY PAY</u>
5- 9 years	\$.45 per hour
10-14 years	\$.55 per hour
15-19 years	\$.65 per hour
20-25 years	\$.75 per hour
25 + years	\$1.00 per hour

In support of its proposals for wage increases and adjustments for both Correction Officers and Deputy Sheriffs' bargaining units, the Union submitted the following exhibits.

1. General Fund Summary Report for 2013 and Sales Tax History 1997-2013
2. Amended Certificate of Estimated Resources dated 1/15/14
3. Audited Financial Statement of Logan County for the Year Ended December 31, 2012
4. Casino Revenue for Logan County from 7/31/2012 to the present
5. Workers' Compensation Rebate for Calendar Year 2013
6. Government Finance Officers Association Best Practices for Appropriate Level of Unrestricted Fund Balance in the General Fund
7. Consumer Price Index- January 2014
8. Map of Ohio Counties and County Seats
9. Statewide Wage Comparables
10. Wage Comparables for Counties in Geographically Proximate Areas
11. Corrections Officers' Longevity and Shift Differential Comparables for Sheriff's Offices Statewide
12. Deputy Sheriff's Longevity and Shift Differential Comparables for Sheriff's Offices Statewide
13. Current CBA for Correction Officers
14. Current CBA for Deputy Sheriffs

Employer's Position- Correction Officers and Deputy Sheriffs' CBAs

Sections 22.1 and 22.3 Correction Officers' CBA

Sections 22.1 and 22.4 Deputy Sheriffs' CBA

The Employer has proposed for both bargaining units a zero percent (0%) increase for 2014, a wage reopener for 2015 and 2016, and no longevity pay. According to the Employer, the Union's proposed wage increases are inappropriate considering the Sheriff's budget and comparable data. The Union's wage proposal exceeds statewide averages regarding increases. As to longevity pay proposed by the Union, the Employer claims that it would have significant economic impact on the Sheriff's Budget, and as such rejects the Union's proposal.

Section 22.3 (FTO Stipend) Deputy Sheriffs' CBA

Employer's Position- Deputy Sheriffs' CBA

The Employer also rejected this proposal because it would have an economic impact of the Sheriff's budget. However, it was indicated by the Chief Deputy that the field training was not an everyday occurrence and the additional responsibility warranted some consideration.

In support of its position regarding wages, the Employer submitted the following documents into evidence for consideration by the Fact Finder.

1. Ohio County Profiles – Logan County
2. Ohio County Sale Tax Rates
3. Unemployment Rates for Ohio by Counties
4. Summary Fund Report for Logan County as of 12/31/2013
5. Amended Certificate of Estimated Resources as of 1/15/2014
6. Hourly Wage Rates for County Employees
7. Sheriff's Office Budget
8. Appropriate Level of Unrestricted Fund Balance in the General Fund
9. Article from Policy Matters , "Three Blows to Local Government
10. Local Government and Estate Tax Reductions
11. State Audit for Period ending December 31, 2012

12. Wage Comparisons with surrounding counties for Deputies and Correction Officers
13. SERB Wage Settlement Report
14. Longevity Pay Comparison
15. Ohio Revised Code 325.19 Vacation
16. Current CBA for Correction Officers
17. CBA for Deputy Sheriff

Finding and Opinion on Wages for Correction Officers and Deputy Sheriffs and Stipend for Deputy Sheriffs

The crux of this case is entitlement to a wage increase and the ability of the Employer to pay. The Union's previous proposals discussed in this report have been rejected by the Fact Finder as not being supported by the evidence submitted. Those proposals all related to some form of compensation. The fact that they were rejected should not infer that there should be no increase in the base wage rates.

The current CBAs (January 1, 2011 through December 31, 2013) provided zero percent (0%) increase in the base wage rates for 2011 and a reopener for both CBAs in December 2011 on wages. As a result of negotiations on the reopener, the parties agreed to a base wage freeze for 2012 in exchange for no layoffs and a reopener in late 2012 for wages in 2013. The negotiations on the 2012 reopener resulted in a wage increases on base wages for both bargaining units of one percent (1%) effective the first full pay period in January of 2013 and another increase of three quarters of a percent (.75%) during the first full pay period of July, 2013.

The average increase over three years of current CBAs was .58 of a percent (.58%) and the average increase for 2013 was .875 of a percent (.875%). Considering this history, the comparables submitted into evidence, and the cost of living, it is clear that the employees in both bargaining units should be entitled to a wage increase, provided that the Employer has the ability to pay.

An analysis of the documents submitted by both parties indicates that the Employer and Logan County have the capacity to grant wage increases to both bargaining units. Specifically, the General Fund Summary as January 22, 2014 submitted into evidence by the Union indicates an unencumbered balance of \$3,781,094.18. The Employer's exhibit of the General Fund Summary sets forth an additional note that indicates that the actual available unencumbered balance is \$ 1,422, 424.74.

The wage increases proposed by the Union for both bargaining units cannot be sustained by either the County's or the Sheriff's resources or the external comparables, i.e., wage settlements in the surrounding counties or statewide. However, based upon the evidence submitted at the hearing, it is the opinion of the Fact Finder that wages increases should be granted to both bargaining units. Based upon a three (3) year CBA for both units the following wage increases would be appropriate: a base wage increase of 2% effective the first full pay period in March 2014; a base wage increase of 1% effective the first full pay period in January, 2015; a base wage increase of 1 % effective the first full pay period in July, 2015; a base wage increase of 1% effective the first full pay period in January, 2016; and a base wage increase of 1% effective July 1, 2016.

In addition, it is the opinion of the Fact Finder that a deputy assigned as a Field Training Officer should receive a stipend of one dollar (\$1.00) per hour.

Recommendation

Therefore, it is recommended that Article 22.1 of the CBAs for both units be amended to read as follows:

Effective the first full pay in March, 2014 bargaining unit members shall receive a base wage increase of two percent (2%); effective the first full pay in January , 2015 bargaining unit members shall receive a base wage increase of one percent (1%); effective the first full pay in July, 2015 bargaining unit members shall receive a base wage increase of one percent (1%); effective the first full pay in January, 2016, bargaining unit members shall receive a base wage increase of one percent (1%); and, effective the first full pay in July, 2016 bargaining unit members shall receive a base wage increase of one per cent (1%).

It is further recommended that Article 22.3 of the Deputy Sheriffs' CBA be amended to read as follows:

“Any employee assigned as a Crime Scene/Evidence Technician and/or Field Training Officer (“FTO”) shall receive a one dollar (\$1.00) per hour stipend in addition to his base step rate of pay for all hours worked or in paid status for the duration of this assignment.

ARTICLE 27

**DURATION, ENTIRE AGREEMENT, SUBSEQUENT
NEGOTIATIONS AND WAIVER**

Sections 27.1 and 27.5 Corrections and Deputy Sheriffs CBAs

Union's Position- Corrections and Deputy Sheriffs CBAs

The Union proposes a three year agreement commencing January 1, 2014 through December 31, 2016. It also proposes the deletion of the Section 27.5 of both units CBAs relating to reopeners.

Employer's Position- Corrections and Deputy Sheriffs CBAs

The Employer proposes that the agreement should be three years in length beginning upon the effective date of the agreement. The Employer did not comment on Section 27.5.

Finding and Opinion

Since the parties agree that there should be a three year term to the agreements, the effective dates for both agreements should be January 1, 2014 through December 31, 2016. Also, since no reopener is recommended for the successor CBAs, Section 27.5 should be deleted from both agreements.

Recommendation

Therefore, it is recommended that 27.1 should read as follows:

“The provisions of this Agreement, unless otherwise provided for herein, shall become effective January 1, 2014, and remain in full force and effect until 11:59 p.m. on December 31, 2016.”

It is further recommended that Section 27.5 be deleted from both CBAs.

IV
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted February 24, 2014. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

March 5, 2014

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 5th day of March to the persons named below.

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/S/ John F. Lenehan
John F. Lenehan

